IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 83 OF 1999

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

Smt. Rosalina Leao Rodrigues,
r/o. Palolem, Cancacona Goa. ..... Respondent.

Mr. E. Afonso, Advocate for the appellants.

Mr. P.A. Kamat, Advocate for th respondent.

COAM : A.P. LAVANDE, J.

DATE : APRIL 15, 2005.

ORAL JUDGMENT :

The appellants challenge Judgment and Award dated 26.4.1999, passed by the Additional District Judge III (South Goa) Margao in Land Acquisition Case No. 153/95.

2. By Notification dated 24.7.1991, issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter, referred to as `the Act'), the

Government acquired large chunks of lands, situated at Nagarcem-Palolem in Canacona Taluka. An area of 746 sq. metres bearing Survey No.195/1 was part of the acquired land. The Special Land Acquisition Officer, by his Award dated 9.12.1993, awarded Rs.9/- per sq. metre and further awarded Rs.2000/- towards fruit value and Rs.60.50 towards the wood value. The Reference Court enhanced the compensation from Rs.9/- per sq. metre to Rs.42/- per sq. metre, relying on the sale deed dated 19.1.1987, by which the respondent had purchased the area of 1455 sq. metres of survey no.195/1 at the rate of Rs.30/- per sq. metre. The Reference Court also granted increase of 10 % every year and awarded Rs.42/- per sq. metre.

3. The only point for determination which arises in the present appeal is whether the compensation fixed by the Reference Court at the rate of Rs.42/- per sq. metre is legal and justified and, if not, what is the compensation payable in respect of the acquired lands ?

4. Mr. Afonso, learned counsel appearing for the appellants, submitted that the Reference Court ought not to have relied upon the sale deed dated 19.1.1987. According to the learned counsel, the Reference Court was not justified in granting increase of 10% every year. According to the learned counsel, the acquired land was a paddy field and, therefore, the increase of 10% every year could not have been

granted and, at the most, increase of 5% every year could have been granted since this Court in a number of connected appeals has held that in respect of paddy fields, increase could be of 5% every year and not 10% every year. It was further submitted that the Reference Court ought to have adjusted the compensation of Rs.2,000/- awarded towards fruit bearing trees.

5. Per contra, Mr. Kamat, learned counsel appearing for the respondent submitted that having regard to the fact that the acquired land was purchased n the year 1987 at the rate of Rs.30/- per sq. metre and having regard to the fact that the respondent did not challenge the said sale deed as not reflecting the correct consideration, no fault could be found with the approach of the Reference Court in fixing the compensation at the rate of Rs.42/- per sq. metre in respect of the acquired land. The learned counsel further submitted that the Reference Court was absolutely justified in awarding increase of 10% per year, since the acquired land was not paddy field and was situated in Municipal area and the acquired land had good potential.

6. I have considered the submissions made by the learned counsel herein for the parties. Insofar as the submission of Mr. Afonso, learned counsel that the Reference Court could not have relied upon sale deed dated 19th January, 1987, I find myself unable to agree with the

same in the absence of any challenge to the said sale deed. Since the sale deed was in respect of the very property, the Reference Court was absolutely justified in relying upon the said sale deed. I am also unable to agree with the submissions of Mr. Afonso that the acquired land was a paddy field. Firstly, no such ground is taken in the memo of appeal. Secondly, the Reference Court has given a finding that in Form III of survey no.195/1 the property isshown as bharad land. I am, therefore, unable to accept the submission of Mr. Afonso that the acquired land was a paddy field. In my opinion, therefore, the Reference Court was justified in holding that in the year 1987 the market rate of the acquired land was Rs.30/- per sq. metre and by giving increase of 10% every year the Reference Court was justified in fixing the market rate of the acquired land at the rate of Rs.42/- per sq. metre, considering the fact that the acquisition was after four years of the execution of the said sale deed. However, I am in agreement with Mr. Afonso that the compensation of Rs.2,000/- awarded by the Special Land Acquisition Officer towards fruit bearing trees has to be adjusted against the total compensation payable in respect of the acquired land at the rate of Rs. 42/- per sq. metre. As stated above, the compensation of Rs.2,000/- awarded by the Special Land Acquisition Officer, has to be adjusted against the total compensation payable to the respondent.

7. In view of the above discussion, the appeal is dismissed.

However, the compensation of Rs.2,000/- awarded towards fruit bearing trees by the Special Land Acquisition officer is ordered to be adjusted against the total compensation payable to the respondents. Having regard to the facts and circumstances of the case, parties are directed to bear their own costs.

A.P. LAVANDE, J.

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